IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22420 of 2004

Between:

S. K. Sayeed, S/o. S.K. Madar,
APSRTC, Office of the Divisional Manager, Charminar Division, Hyderabad.

..... PETITIONER

AND

1 The Regional Manager, APSRTC, Hyderabad City Region, JBS, Picket, Secunderabad.
2 The Divisional Manager, Charminar Division, Koti Bus Terminus, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction more particularly one in the nature of Mandamus declaring that the action of the respondents in not paying and gratuity amount to the petitioner for the out of employment period ie from 12/12/1981 to 28/11/1987 (ie from the date of removal to the date of reinstatement) as illegal, arbitrary, bad and contrary to the judgment/award and consequently direct the respondents to pay the gratuity for the said period and pass such other order or orders.

Counsel for the Petitioner:MR.P.VENKATESWAR RAO

Counsel for the Respondents: MR.V.T.M.PRASAD (S.C.FOR APSRTC)

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 22420 of 2004

O R D E R:

The present writ petition is filed challenging the action of the respondents in not paying the gratuity amount to the petitioner for the out of employment period i.e. from 12.12.2981 to 28.11.1987 (i.e. from the date of removal to the date of reinstatement).

It is the case of the petitioner that he was removed from service on 21.12.1981. When he challenged the order of removal, the Additional Labour Court, Hyderabad by its order dated 6.7.1987 in I.D. No. 166 of 1984 directed the respondent-Corporation for reinstatement of the petitioner into service with continuity of service but without backwages and attendant benefits. After his reinstatement, he was promoted as Controller and thereafter as T.I. – III. He retired from service on 30.1.2004. The grievance of the petitioner is that the respondents did not pay the gratuity for the period from 12.10.1981 to 28.11.1987 i.e. from the date of his removal to his reinstatement into service. According to him, as the Labour Court ordered for continuity of service, he has to be deemed as in service and therefore he is entitled for payment of gratuity. Hence the writ petition.

Learned counsel for the petitioner contended that when the petitioner was reinstated into employment with continuity of service, he is entitled for gratuity, and for that purpose he placed reliance on decisions of this court in **M. Rama Rao v. Asst. Traffic Manager, APSRTC**[1] and W.P. 23200 of 2003 dated 16.12.2003.

On the other hand, learned counsel for the respondents contended that the attendant benefits have not been ordered by the Tribunal and therefore the petitioner is not entitled for gratuity. Continuity of service is only for the purpose of future promotions and

therefore the petitioner is not entitled for gratuity for the out of employment period.

The facts are in narrow compass. The petitioner was removed from service on 21.12.1981. The Addl. Labour Court in I.D. No. 166 of 1984 dated 6.7.1987 set aside the removal order and ordered reinstatement of the petitioner with immediate effect but without any backwages and attendant benefits but with continuity of service only. In W.P. 232200 of 2003 dated 16.12.2003, this Court placed reliance on the decision cited (1) supra and allowed the writ petition. In the decision cited (1) supra, it is held that since the Industrial Court has granted to the petitioner the continuity of service, it should be held that for all practical purposes the petitioner should be deemed to have been in continuous service all through. In that case, the Labour Court ordered for reinstatement with continuity of service and all other benefits except backwages. In this case also, the Industrial Tribunal ordered for reinstatement with continuity of service only. When the continuity of service is ordered, this court held that for all practical purposes the petitioner should be deemed to have been in continuous service all through.

Following the said judgments, the writ petition has to be allowed.

In the result, the writ petition is allowed directing the respondents to pay the gratuity amount to the petitioner for the out of employment period i.e. from 12.12.1981 to 28.9.1987 within a period of three months from the date of receipt of a copy of this order.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Regional Manager, APSRTC, Hyderabad City Region, JBS, Picket, Secunderabad.
2 The Divisional Manager, Charminar Division, Koti Bus Terminus, Hyderabad.

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